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Mr Darrell Channing
Director, Competition Exemptions
Australian Competition and Consumer Commission
GPO BOX 3131
Canberra ACT 2601

Restriction of publication claimed in relation to part

Dear Mr Channing and Ms Wu

Proposed application for Authorisation by Virgin Australia – Virgin Australia response to ACCC Request for Information 26 May 2022

We refer to Virgin Australia's application for Authorisation of the Proposed Conduct (**Authorisation**), supporting submission received by the ACCC on 14 April 2022 (**Submission**), and the ACCC's Request for Information received on 26 May 2022 (**RFI**).

Virgin Australia's responses to the RFI are at **Annexure A**.

Confidentiality

Virgin Australia claims confidentiality over the portions of the ACCC's questions, and our responses, below highlighted in **blue**. The request for confidentiality is for the reason that disclosure of those highlighted portions of text would have the effect of revealing information that is commercially confidential to Virgin Australia, and/or which has been redacted in the public version of the Submission on the ACCC's register.

Please let us know if you would like to discuss any aspect of this letter.

Yours faithfully
Gilbert + Tobin



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Annexure A

Responses to ACCC RFI

- 1 Please identify all potential Partner Carriers with whom Virgin Australia is seeking authorisation to engage in the Proposed Conduct. Please indicate which of these carriers Virgin Australia has had or currently has an arm's length codeshare arrangement with at any time since 1 January 2015 and the dates on which that arrangement commenced and, where relevant, ended. Please indicate whether any codeshare arrangements are on hold or suspended but have not ended.

Context for authorisation

- 1.1 Virgin Australia has historically operated a limited network of long-haul services, which have been extended through a network of codeshare partnerships. In many of these cases, these international services have been marketed under authorised joint ventures which involved authorisation permitting joint pricing of codeshare services. As a practical matter, where Virgin Australia did not operate its own services under the joint venture (e.g., in its alliance with Singapore Airlines), the operating carrier set the price and Virgin Australia applied it to codeshare services. The joint pricing and revenue sharing mechanisms typically created the incentive for the operating carrier to provide favourable prorates to Virgin Australia. The ACCC is familiar with these dynamics from the consideration of Virgin Australia's alliances with Singapore Airlines, Etihad Airways, Virgin Atlantic, Delta Air Lines, and HNA Group.
- 1.2 In addition, Virgin Australia had arm's length codeshare agreements with a number of other international carriers. With the onset of the COVID-19 pandemic, which closed international borders, and with Virgin Australia's administration, Virgin Australia paused the sale of international partner airline operated services under a VA code, whether under a joint venture or arm's length agreement. Depending on the circumstances of the partner airline, including the extent to which their networks were impacted by COVID-19, some agreements were terminated, others were allowed to lapse, and others technically remain in effect but are dormant.
- 1.3 As Virgin Australia is starting to rebuild its virtual and operated international networks from scratch, it has had the opportunity to reassess the long-term viability and profitability of its international long-haul offerings through Virgin Australia sales channels.
- 1.4 Going forward, with the benefit of the Proposed Conduct, Virgin Australia intends to enter into codeshare arrangements with a small and focused portfolio of partners that enhance its customer offer while being financially sustainable. Many of Virgin Australia's arm's length codeshare services previously resulted in significant losses which outweighed the network benefit of offering those connections. It was this kind of approach to commercial arrangements that contributed to Virgin Australia's sustained losses and, ultimately, its administration following the onset of COVID-19. Post-administration, Virgin Australia's focus is on long-term viability and the Proposed Conduct is part of Virgin Australia's plan to rebuild a sustainable international offer.
- 1.5 Virgin Australia seeks authorisation to enable it to propose alternative pricing structures to potential Partner Carriers. A potential Partner Carrier may prefer not to engage in the Proposed Conduct. In those circumstances, Virgin Australia would need to make an assessment as to

whether a traditional pricing model will result in a codeshare partnership that brings value to Virgin Australia's customer offer without resulting in losses. Virgin Australia does not currently propose to enter into arm's length codeshare services using the traditional pricing model but may in specific circumstances. Authorisation of the Proposed Conduct will simply provide Virgin Australia the opportunity to engage with potential partner carriers and offer terms of engagement that will not be unviable for Virgin Australia. It cannot realistically propose such pricing models if it does not have authorisation to do so.

Potential Partner Carriers

- 1.6 As outlined at section 1.1 of the Submission, Virgin Australia is seeking authorisation for the Proposed Conduct on behalf of itself and a class of Partner Carriers (as defined in section 1.1(b) of the Submission) rather than on behalf of a closed list of individual Partner Carriers.
- 1.7 The class of Partner Carriers does not contain large numbers of unidentified carriers, as suggested in Qantas' submission. Rather, the class of carriers that are *eligible* to become Partner Carriers is naturally limited by the following:
 - (i) *by definition*, in the definition of a Partner Carrier:
 - (A) as an operating carrier with which Virgin Australia proposes to codeshare as a marketing carrier;
 - (B) on international routes, or flight segments of an international route, involving a city pair on which Virgin Australia does not operate or price services; and
 - (ii) *by operation*, as only 39 carriers¹ operate international long-haul services to and from Australia on their own fleet;
 - (iii) *by existing relationships with Qantas* which would naturally limit available partners, as demonstrated by the plot map in 1.8 below, Qantas has partnered with 24 international carriers, 10 of which fly long-haul to and from Australia. These 10 carriers comprise over 25% of the international long-haul carriers that operate services to and from Australia. It is commercially unlikely that an international airline would pursue a codeshare relationship with both Qantas and Virgin Australia in parallel. Therefore, to the extent that they currently offer or may offer long-haul flight services in the future, the following carriers are unlikely to be potential Partner Carriers: Air France, Air New Zealand, Air Tahiti Nui, Air Vanuatu, Aircalin, Alaska Airlines, American Airlines, Asiana Airlines, Bangkok Airways, British Airways, Cathay Pacific, China Airlines, China Eastern Airlines, China Southern Airlines, El Al, Emirates, Fiji Airways, Finnair, Japan Airlines, KLM, LATAM Airlines Group, Solomon Airlines, SriLankan Airlines, and WestJet²;
 - (iv) *by the reality of commercial negotiation and considerations* as potential Partner Carriers may have different interests or have limited services to Australia such that a codeshare arrangement would not deliver sufficient benefits to Virgin Australia for it to consider pursuing them. Similarly, potential Partner Carriers are unlikely to be interested in a codeshare arrangement with Virgin Australia where another carrier from the same region

¹ As at March 2022. BITRE, International scheduled passenger flights and seats by airline, route and city pairs, March 2022 ([link](#)).

² Qantas, "Our network and partner airlines" ([link](#)).

already has a codeshare arrangement with Virgin Australia and is therefore wholly or partly satisfying the demand for services to that region that exists via Virgin Australia sales channels. It is unlikely that any residual demand for services to that region would be sufficient to justify the investments required to enter into a codeshare arrangement with Virgin Australia. Therefore, Virgin Australia is unlikely to have more than one Partner Carrier in any region; and

- (v) *by the cost and complexity of maintaining multiple codeshare partners in selling channels* as each partnership introduces complexity within all commercial systems, and potential confusion for customers. There is an advantage for Virgin Australia in keeping the number of partners small and focussed, and not engaging with multiple partners serving the same fundamental geographies.

Virgin Australia considers that it is likely to have only 7 or 8 Partner Carriers at a time (and certainly no more than 10) for the reasons set out above, but the identity of these Partner Carriers may change over time due to the above considerations.

It is evident that while individual carriers may meet or fail to meet the definition of a Partner Carrier, the class of Partner Carriers is not imprecise, nebulous or impermissibly broad. The individual airlines that fall within the definition of Partner Carriers may change from time to time but the characteristics of the class of Partner Carriers do not change and leave a relatively small number of potential Partner Carriers: currently a maximum of 21 international carriers, with many of those not being realistic commercial partners for Virgin Australia due to their limited services or the misalignment of their businesses.

The maps below show all non-stop long-haul flights³ from Australia scheduled for October 2022 as published at 6 June 2022, and demonstrate:

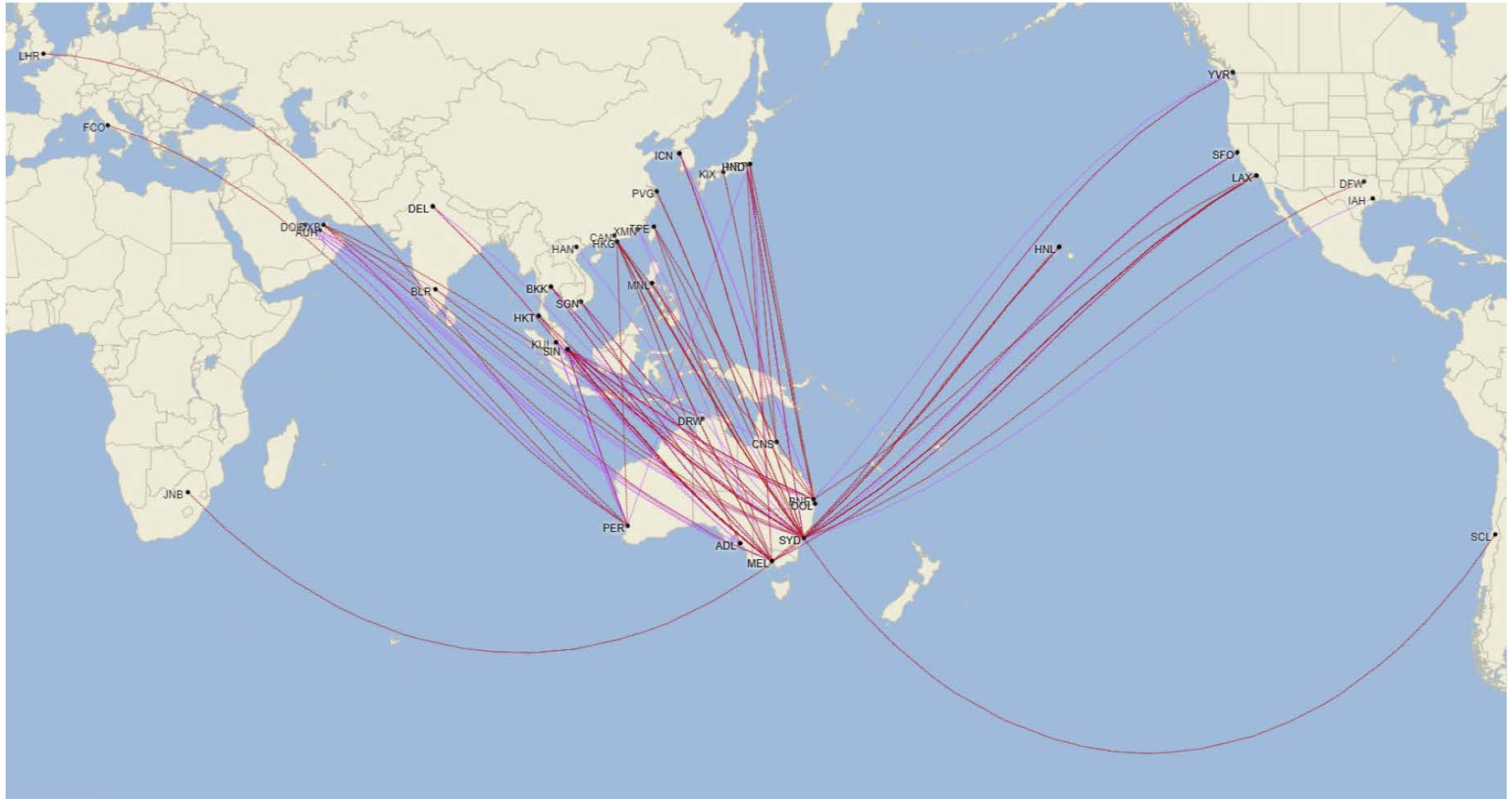
- in red, flights that will be operated by Qantas and carriers who have partnered with Qantas (**Qantas / Qantas Partners**); and
- in purple, the following flight services:
 - flights operated by carriers that are not Qantas / Qantas Partners and therefore may theoretically be 'available' for Virgin Australia to partner with as part of the Proposed Conduct. This map excludes any routes on which a carrier does not meet the definition of a Partner Carrier (as outlined at 1.1(b) of the Submission),

(Available Partners).

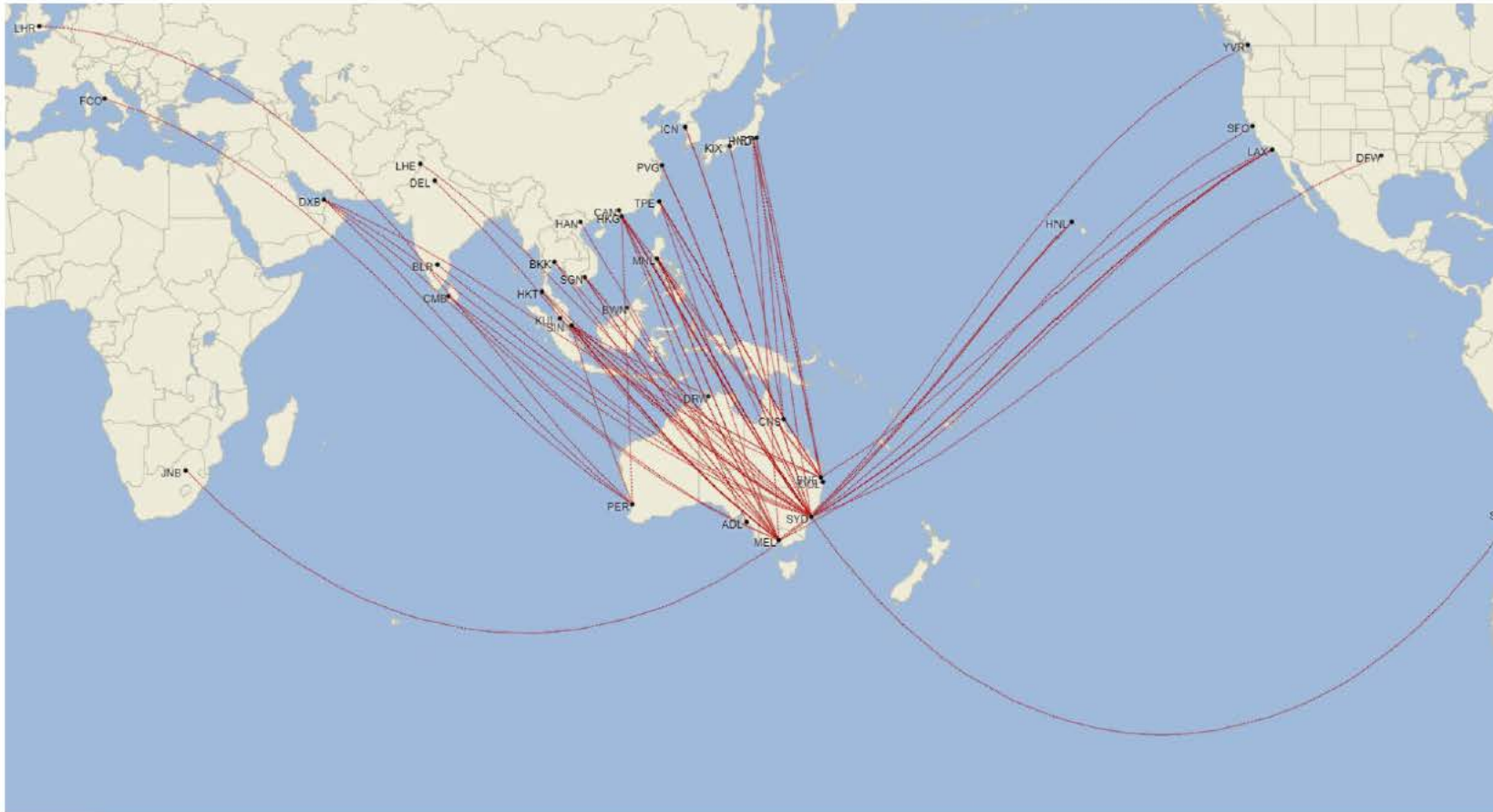
For completeness, the Available Partners services plot map includes United Airlines, a current Partner Carrier of Virgin Australia.

³ The maps exclude flights to New Zealand, the Pacific Islands and Indonesia as these are short-haul flights.

1.8 Plot map: Qantas / Qantas Partner services overlaid with Available Partner services

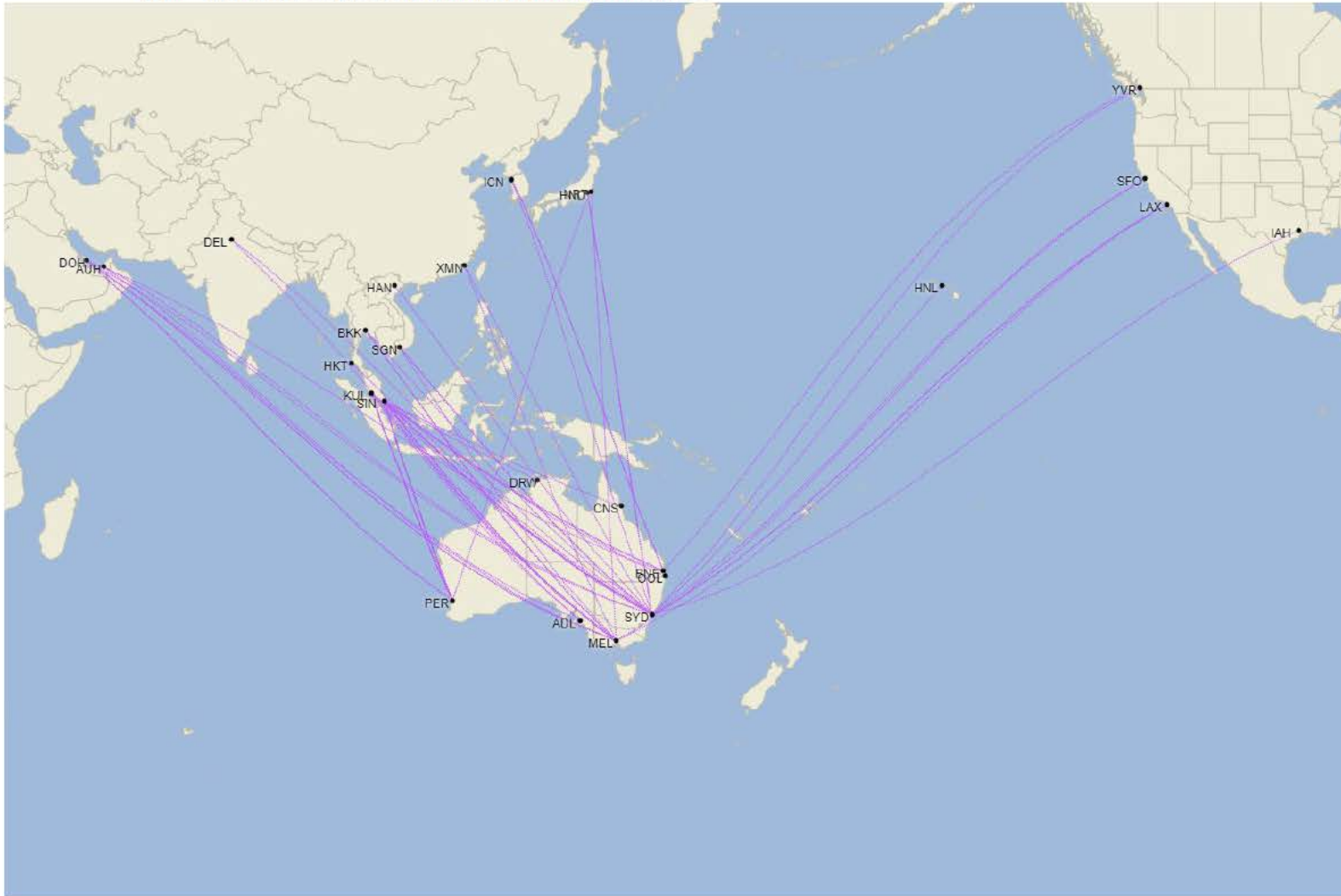


1.9 Plot map: Services operated by Qantas / Qantas Partner



#	Operating Airline	Destination
1	3K Jetstar Asia	SIN
2	AA American Airlines	LAX
3	BA British Airways	SIN
4	CX Cathay Pacific	HKG
5	CZ China Southern	CAN
6	EK Emirates	DXB
7	JL Japan Airlines	HND
8	JL Japan Airlines	NRT
9	JQ Jetstar	BKK
10	JQ Jetstar	HKT
11	JQ Jetstar	HNL
12	JQ Jetstar	KIX
13	JQ Jetstar	NRT
14	JQ Jetstar	SGN
15	JQ Jetstar	SIN
16	MU China Eastern	PVG
17	OZ Asiana Airlines	ICN
18	QF Qantas	DEL
19	QF Qantas	DFW
20	QF Qantas	FCO
21	QF Qantas	HKG
22	QF Qantas	HND
23	QF Qantas	HNL
24	QF Qantas	JNB
25	QF Qantas	LAX
26	QF Qantas	LHR
27	QF Qantas	MNL
28	QF Qantas	PVG
29	QF Qantas	SCL
30	QF Qantas	SFO
31	QF Qantas	SIN
32	QF Qantas	YVR
33	UL SriLankan Airlines	CMB

1.10 Plot map: Services operated by Available Partners



#	Operating Airline	Destination
1	5J Cebu Pacific	MNL
2	CI Air China	TPE
3	AC Air Canada	YVR
4	AI Air India	DEL
5	BI Royal Brunei	BWN
6	BR EVA Air	TPE
7	D7 AirAsia X	LAX
8	EY Etihad Airways	AUH
9	HA Hawaiian Airlines	HNL
10	KE Korean Air	ICN
11	MF Xiamen Airlines	XMN
12	MH Malaysia Airlines	KUL
13	NH ANA	HND
14	NH ANA	NRT
15	OD Malindo Air	KUL
16	PK Pakistan International Airlines	LHE
17	PR Philippine Airlines	MNL
18	QH Bamboo Airways	HAN
19	QH Bamboo Airways	SGN
20	QR Qatar Airways	DOH
21	SQ Singapore Airlines	SIN
22	TG Thai Airways	BKK
23	TG Thai Airways	HKT
24	TR Scoot	SIN
25	UA United Airlines	IAH
26	UA United Airlines	LAX
27	UA United Airlines	SFO
28	VN Vietnam Airlines	HAN
29	VN Vietnam Airlines	SGN

1.11 Virgin Australia seeks authorisation to give effect to the Proposed Conduct with any Partner Carrier as defined, rather than a restricted list of individual airlines. The table below identifies the potential Partner Carriers with whom it is currently considering engaging in the Proposed Conduct, as well as its announced partners, United Airlines and Qatar Airways. Virgin Australia notes that in providing the names of the potential Partner Carriers below, it is not limiting the class of Partner Carriers with which it may seek to engage in the Proposed Conduct.

#	Potential or current Partner Carriers	Status of any codeshare arrangement	Historical arm's length codeshare where VA sold partner operated services?	Historical relationship of VA selling partner operated services
1.	United Airlines	Virgin Australia is a party to a codeshare arrangement pursuant to the Proposed Conduct, as authorised by the ACCC on 12 May 2022. Virgin Australia commenced sale of these fares to customers on 24 May 2022.	*	Prior to the Interim Authorisation Decision which allowed interim authorisation for Virgin Australia and United Airlines to give effect to the Proposed Conduct, Virgin Australia had never sold United Airlines operated services.
2.	Singapore Airlines	<p>Singapore is a former authorised joint venture partner of Virgin Australia and its relationship has never been "arm's length" for this reason. Singapore Airlines is also a former shareholder in Virgin Australia (pre-administration).</p> <p>Virgin Australia does not currently market or offer tickets for sale on services operated by Singapore Airlines.</p> <p>[Confidential: restriction of publication claimed] Virgin Australia requests that the ACCC extend interim authorisation to include Singapore Airlines as a Partner Carrier.</p>	*	Virgin Australia and Singapore Airlines received authorisation from the ACCC to enter into a joint venture aviation alliance on 1 December 2011, ⁴ which was re-authorised for five years on 23 September 2016. This authorisation expired on 15 October 2021. ⁵ The authorisation and re-authorisation allowed Virgin Australia and Singapore Airlines to fully cooperate on all aspect of their Australia – Singapore services and any international or domestic connecting routes, including joint pricing and scheduling, and joint marketing and sales. As a practical matter, since Virgin Australia did not operate its own services, Singapore Airlines set the fares for codeshare services, which were adopted by

⁴ Final Determination, A919267 and A91268, 1 December 2011 ([link](#)).

⁵ Final Determination, A91539 and A91540, 23 September 2016 ([link](#)).

				Virgin Australia. Further, prior to Virgin Australia's administration and sale, Singapore Airlines held a ~20% stake in Virgin Australia.
3.	Qatar Airways	<p>Virgin Australia has announced a new partnership with Qatar Airways to commence in July 2022.</p> <p>Virgin Australia and Qatar Airways intend to enter into a codeshare agreement that includes the Proposed Conduct. [Confidential: restriction of publication claimed] Virgin Australia requests that the ACCC extend interim authorisation to include Qatar Airways as a Partner Carrier.</p>	*	Virgin Australia and Qatar Airways have not previously been codeshare partners.
4.	All Nippon Airways (ANA)	<p>Virgin Australia has previously had a codeshare agreement with ANA. However, the codeshare agreement was never implemented for Virgin Australia sales due to the onset of COVID-19 and Virgin Australia has therefore never sold ANA operated services.</p> <p>Virgin Australia does not currently market or offer customers tickets for sale on services operated by ANA</p> <p>[Confidential: restriction of publication claimed]</p>	✓	Virgin Australia and ANA entered into an arms-length codeshare arrangement in January 2020.
5.	Air Canada	<p>Virgin Australia has previously had a codeshare agreement with Air Canada.</p> <p>Virgin Australia does not currently market or offer customers tickets for sale on services operated by Air Canada</p> <p>[Confidential: restriction of publication claimed]</p>	✓	Virgin Australia and Air Canada entered into an arm's length codeshare arrangement in June 2017, which ended in March 2020.

6.	Hawaiian Airlines	<p>Virgin Australia has previously had an arm's length codeshare agreement with Hawaiian Airlines.</p> <p>Virgin Australia does not currently market or offer customers tickets for sale on services operated by Hawaiian Airlines.</p> <p>[Confidential: restriction of publication claimed]</p>	✓	<p>Virgin Australia and Hawaiian Airlines entered into an arm's length codeshare agreement in November 2011 however these arrangements are currently dormant.</p>
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Counterfactual

- 1.12 The relevant counterfactual to the Proposed Conduct is not Virgin Australia entering into the same kind of arm's length agreements as it did pre-COVID-19 and pre-administration including because:
- (a) **Many past codeshare arrangements were not arm's length or were entered into with broader commercial considerations in mind.** Prior to being purchased by Bain Capital in November 2020, Etihad Airways, Singapore Airlines, Nanshan Group, Virgin Group and HNA Group all owned equity stakes in Virgin Australia. Virgin Australia had authorised joint ventures with international airlines associated with each of these shareholders (excluding Nanshan Group) and codeshare services were offered in this context.
 - (b) **New circumstances and a commitment to ensure that services are not loss-making.** Having emerged from administration, Virgin Australia is focused on ensuring that its commercial arrangements are sustainable, including any potential codeshare arrangements. It has a low appetite for entering into commercial arrangements or making network decisions that are considered likely to be loss-making.

2 Please identify all international carriers with whom Virgin Australia:

- a. has an existing codeshare agreement but is not a potential Partner Carrier (i.e. not identified in response to Question 1); and**
- b. is currently negotiating, or proposing to negotiate, an arm's length codeshare agreement.**

- 2.1 Please see Virgin Australia's response to subsections (a) and (b) below.
- (a) Virgin Australia is not selling codeshare services under any operational codeshare agreements with any potential Partner Carriers (with the exception of United Airlines, following receipt of interim authorisation).
 - (b) Virgin Australia is currently negotiating codeshare agreements with Singapore Airlines, intends to enter into a codeshare arrangement with Qatar Airways and has recently negotiated an agreement with United Airlines, as described above. All of these agreements are intended to have pricing provisions that give effect to the Proposed

Conduct. Virgin Australia does not currently propose to enter into arm's length codeshare services using the traditional pricing model but may consider doing so in specific circumstances, including if a potential partner would not prefer to engage in the Proposed Conduct.

3 Please confirm whether Virgin Australia is seeking interim authorisation to engage in the Proposed Conduct with Qatar Airways from July 2022.

3.1 Virgin Australia confirms that it is seeking interim authorisation to engage in the Proposed Conduct with:

- (c) Qatar Airways; and
- (d) Singapore Airlines [**Confidential: restriction of publication claimed**]

Virgin Australia requests that interim authorisation be granted effective the date of the Draft Determination.

4 Please provide annual time series financial (cost and revenue) data for individual codeshare arrangements to substantiate the statement, "Virgin Australia's experience is that in the absence of an authorised joint venture permitting price coordination, traditional arm's length codeshare agreements are no longer commercially sustainable for Virgin Australia".⁶

4.1 Virgin Australia does not have annual time series financial data for individual codeshare arrangements. The Submission (at section 2.7) included examples based on real situations. Virgin Australia would be happy to discuss this question with the ACCC and to provide a qualitative response.

The financial impacts that have made arms-length codeshare arrangements unsustainable have included:

- Fixed rates payable to partner airlines under arms-length codeshare Special Prorate Agreements exceeding the fare collected from the customer when the itinerary involves only partner airline flights.
- Fixed rates payable to partner airlines under arms-length codeshare Special Prorate Agreements significantly reducing the earned revenue of Virgin Australia operating segments (when the itinerary involves partner flights sold in connection with a Virgin Australia flight) to the extent that the revenue earned on the Virgin Australia flight is below the cost of carriage.
- Inability to offer competitive fares in market (to avoid or limit the two outcomes described above) to the extent that Virgin Australia's brand perception is impacted.

⁶ Virgin Australia's application for authorisation (public register version), 14 April 2022, p.10.

5 We note Virgin Australia’s submissions about the circumstances in which it would cease engaging in the Proposed Conduct; specifically:

“The Proposed Conduct will cease to apply where Virgin Australia commences operating or pricing services in competition with a Partner Carrier on overlapping routes”,⁷ and

“...To use the example provided by Qantas, if Virgin Australia was to commence operations between Sydney and Los Angeles, [Confidential: restriction of publication claimed] Virgin Australia would not continue to give effect to the Proposed Conduct on Melbourne to Los Angeles and Brisbane to Los Angeles services. [Confidential: restriction of publication claimed]”.⁸

To further our understanding of the circumstances in which Virgin Australia might cease engaging in the Proposed Conduct, please clarify:

- if (by way of example) Singapore Airlines were to become a Partner Carrier and Virgin Australia subsequently decided to commence operations on a city pair between Australia and Singapore, does Virgin Australia propose that it would:
 - i. Cease engaging in the Proposed Conduct with Singapore Airlines?
 - ii. Cease engaging in the Proposed Conduct in relation to Australia-Singapore (Origin-Destination) services, but continue to engage in the Proposed Conduct in relation to Singapore Airlines operated services to/from Europe and/or other points in Asia?
 - iii. Cease the Proposed Conduct on the date that it made a final, binding decision to commence operating on the route (and if so, what that means and whether it is an internal decision or one that is communicated externally), on the date that it commenced operating on the route, on the date that it started selling fares for Virgin Australia operated services, or some other date (please specify)?

5.1 In response to the hypothetical proposed by the ACCC, if Singapore Airlines were to become a Partner Carrier and Virgin Australia subsequently decided to commence operations on a city pair between Australia and Singapore, we confirm that Virgin Australia would:

- (i) cease engaging in the Proposed Conduct with Singapore Airlines;
- (ii) cease engaging in the Proposed Conduct with Singapore Airlines in relation to all Australia to Singapore services. Virgin Australia notes that Singapore Airlines services operate on a “trunk route” between Australia and Singapore with onward connections to other destinations. If Virgin Australia were to codeshare on, for example, a SYD-LHR service, this would include a SYD-SIN sector. [Confidential: restriction of publication claimed]

⁷ Virgin Australia’s application for authorisation (public register version), 14 April 2022, p.3.

⁸ Virgin Australia’s response to interested party submissions, 9 May 2022, p.3.

- (iii) cease engaging in the Proposed Conduct on the date that it made a final, binding decision to commence operating on the overlapping route **[Confidential: restriction of publication claimed]**.

If the ACCC considers that there should be specific parameters in place governing these triggers then we would be happy to discuss.

6 Is the Proposed Conduct exclusive such that it would preclude Partner Carriers from engaging in the same conduct with another Australian domestic airline?

- 6.1 The Proposed Conduct is not exclusive and it would not preclude Partner Carriers from engaging in the same conduct with another Australian domestic airline. Virgin Australia does not have control over whether Partner Carriers choose to enter into codeshare arrangements (whether arms-length or authorised by the ACCC or otherwise) with other Australian domestic airlines. As outlined at 1.7(iii) above, in Virgin Australia's view it is commercially unlikely that international carriers would enter into codeshare agreements with more than one Australian domestic airline.

Virgin Australia notes that as the conduct constitutes resale price maintenance, the ACCC would in any case expect to receive an application for authorisation or notification of the conduct from any parties proposing to enter into similar conduct.